

Chapter HSS 52

CHILD CARE INSTITUTIONS

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Subchapter I — General Provisions and Licensing of Child Care Institutions

HSS 52.01 Introduction. (1) STATEMENT OF INTENT. The intent of these rules is to protect and promote the health, safety and welfare of children in the care of child care institutions in Wisconsin.

(2) APPLICABILITY. This chapter applies to all child care institutions.

(3) EXCEPTIONS. The department may make exceptions to any rule for licensing child care institutions when it is assured that granting such exceptions is not detrimental to the health, safety or welfare of children.

(4) DEFINITIONS. As used in this chapter:

(a) "Board of directors" means the policy-making body which governs a child care institution and is responsible for compliance with this chapter.

(b) "Child" means a person under 18 years of age, except that a person under continuing juvenile court jurisdiction who is over 17 years of age but has not yet attained the age of 21 is also considered a "child" for purposes of this chapter.

(c) "Child care institution" means a child welfare agency which regularly provides care and maintenance for children within the confines of its building.

Note: An agency having education as its primary purpose is deemed to be a child care institution when its pupils, in the ordinary course of events, do not return annually to the homes of their parents or guardians for at least 2 months of summer vacation. Exceptions to these rules may be considered for such agencies when the exceptions, in the department's opinion, do not jeopardize the health, safety and welfare of children.

(d) "Child welfare agency" means any person required to be licensed under s. 48.60, Stats.

(e) "Department" means the Wisconsin department of health and social services.

(f) "Division" means the department's division of community services.

(g) "Division of health" means the department's division of health.

(h) "Guardian" means the person or agency appointed by a court to make major decisions affecting a child, which may include consent to marriage, to enlistment in the armed forces, to major surgery and to adoption, or to manage the estate of a minor.

(i) "Legal custodian" means the person or agency to whom a court has transferred a child's legal custody, and who thereby has the right and duty to protect, train and discipline the child and to provide for the child's care needs. "Legal custody" has the meaning prescribed in s. 48.02 (12), Stats.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.

HSS 52.02 Organization and administration. (1) **INCORPORATION.** Every child welfare agency shall be incorporated. Any agency incorporated outside of Wisconsin shall secure authorization from the secretary of state to do business in Wisconsin.

(2) **BOARD OF DIRECTORS.** (a) Every agency shall be governed by the board of directors which is responsible for the operation of the agency according to its defined purposes.

(b) If the agency is incorporated in another state, the board of directors shall:

1. Meet in Wisconsin at least once during the period for which the license is issued; or

2. Have a subcommittee of at least 3 Wisconsin residents one of whom shall be a member of the board. This subcommittee shall be responsible to the board of directors to see that board policies are carried out and that there is adherence to licensing rules.

(c) When requested, the board, or its subcommittee if it is in the category covered by par. (b), shall meet with the licensing representative.

(d) The board shall:

1. Define its responsibilities. These responsibilities shall include:

a. The establishment of policies to be followed by the institution and regular planned review of its policies and purposes to determine that the interests of children are being served.

b. Surveillance that the institution does not discriminate in its personnel practices, intake and services on the basis of race, color and national origin.

c. The exercise of trusteeship for property, investment and protection from liability.

d. Approval of the budget and responsibility for obtaining and disbursing of funds.

e. Employment of a qualified executive and delegation to that executive the responsibility for the administration of the institution and the employment of other staff members.

2. Meet at least semiannually and keep minutes of each meeting which shall be made a part of the permanent records of the institution.

3. Keep informed to insure that the institution fulfills its functions.

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4. Consult with the department prior to the establishment of a new institution or the changing of a basic program of care of an existing institution.

5. Notify the department when there is a change in the executive of the institution and/or the board chairman.

6. Notify the department of any major changes pending or occurring in the corporate structure, organization or administration of the agency.

(3) APPLICATION. (a) All applications for a license shall be on forms prescribed by the department, shall be signed by the chief officer of the board of directors and the institution executive and shall be submitted to the department.

(b) If the board is applying for a license for the first time a written notification indicating intent to operate shall be submitted at least 60 days prior to the date on which it proposes to begin operation.

(c) The formal application for the initial license shall be submitted before a first license is issued. The institution shall not begin operation as an institution until it receives such a license.

(d) The following material shall accompany the first application for a license:

1. A copy of the articles of incorporation and, if existent, a copy of the constitution and by-laws;

2. Evidence of the availability of funds to carry the institution through the first year of operation;

3. A statement of purposes which includes a description of the geographic area to be served, the types of children to be accepted for care, the services to be provided and the program objectives;

4. A description of the job responsibilities for each type of position proposed for the institution;

5. A proposed organization chart insuring that there will be staff in number and qualifications for the scope of the agency services;

6. A list of the board members; and

7. A copy of the certificate of need obtained under ss. HSS 52.50 to 52.55.

(e) Subsequent applications shall be submitted to the department:

1. At least 3 weeks prior to the expiration of the current licensing;

2. When an additional facility or new program which is subject to licensing is to be opened;

3. When the address of the facility is to be changed; and

4. When ownership of the institution is changed.

(f) The following material shall accompany subsequent applications for a license:

1. Copies of the annual reports published since the last license was issued;

2. The budget for the current fiscal year and the financial audit of the past year;
3. A list of the current members of the board of directors and its committees;
4. The number, names, qualifications and classifications of current staff;
5. A copy of the current staff organization chart;
6. A description of any program review and evaluation and changes in program content and purpose which have occurred since the last license was issued;
7. If the expiring license is provisional, a statement showing whether the requirements on which a provisional license was based have been met or, if not, plans for meeting them;
8. A copy of any revisions of personnel practices that have been made since the last license was issued; and
9. If the applicant desires to expand the bed capacity of an existing child care institution, a copy of the certificate of need obtained under ss. HSS 52.50 to 52.55.

(g) A written amendment to the license shall be secured from the department by the board of directors prior to any changes in the conditions of the current license.

(h) When a license is issued, the board shall display the certificate of license in a prominent place in the institution.

(i) Within 60 days after receiving a complete application for a child care institution license, the department shall either approve the application and issue the license or deny the application. If the application for a license is denied, the department shall give the applicant reasons, in writing, for the denial.

(4) FINANCING. (a) The board, with the executives, shall be responsible for the safety and judicious use of the funds of the institution. Policies and practices shall be in accord with sound budgeting, disbursement and audit control procedures.

(b) Each institution shall:

1. Have sufficient funds assured to carry a new institution through its first year of operation and be able to furnish evidence to that effect.
2. Have a sound plan of financing to assure sufficient funds to enable it to carry out its defined purposes and to provide proper care for children, as required by the administrative rules relating to licensing child welfare agencies.
3. Provide for annual audit of all accounts by a certified public accountant who is not in the employ of the agency nor a member of the board.
4. On request, provide the department with financial records or financial statements.

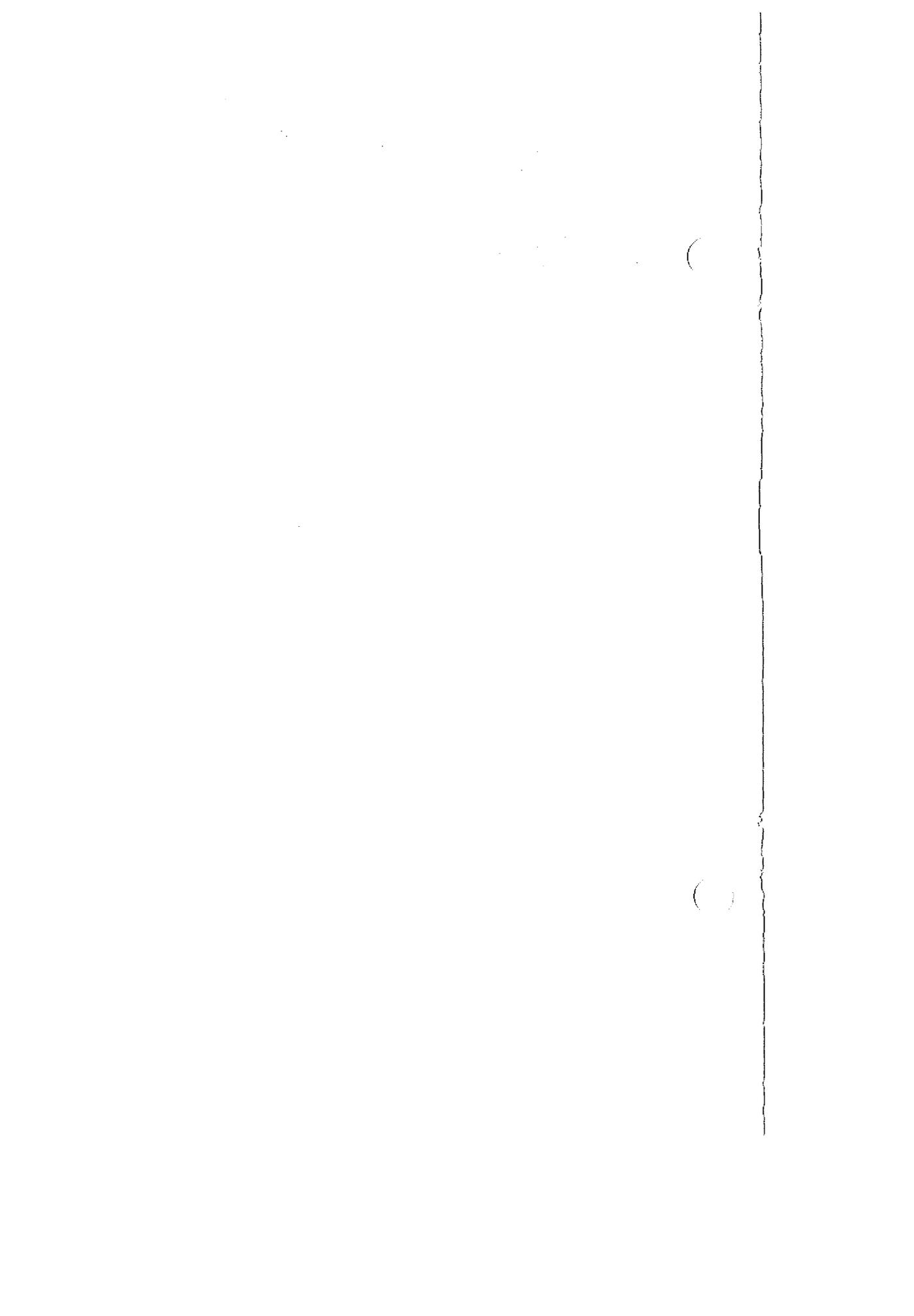
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(c) The financial operation of the institution shall be based on an annual budget approved by the board. This budget shall reflect anticipated expenditures and sources of income.

History: Cr. Register, October, 1957, No. 22, eff. 11-1-57; r. and recr. Register, July, 1970, No. 175, eff. 2-1-71; renum. from PW-CY 40.51, Register, August, 1982, No. 320, eff. 9-1-82; cr. (3) (i), Register, October, 1985, No. 358, eff. 11-1-85; r. and recr. (3) (a), (d) and (f), Register, October, 1988, No. 394, eff. 11-1-88.

HSS 52.03 Personnel administration. (1) PERSONNEL POLICIES. (a) Each institution shall have a written statement of personnel practices adopted by the board. The board shall review personnel practices at least every 2 years.

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partment. Authorized representatives of the department shall have access to all reports pertinent to licensing.

(2) RECORDS. (a) Each institution shall maintain:

1. A register of all children currently receiving care. Included in the register shall be information concerning the name, sex, birthdate and legal custodian.

2. Individual case records for all children accepted for care. These records shall be maintained for at least 5 years after a child is discharged from care. (See s. HSS 52.06 (5) (b)).

3. Health records of children. (See s. HSS 52.05(7)(i)).

4. Personnel records. (See s. HSS 52.03(1)(c)).

5. Financial reports and audits. (See s. HSS 52.02 (4)(b)).

6. Copies of menus of all meals served. (See s. HSS 52.05 (8) (a) 5.).

7. Records of fire drills held. (See s. HSS 52.04 (9) (d)).

8. Log on the use of isolation rooms. (See s. HSS 52.05 (6) (g) 3.).

(b) All records shall be protected against fire damage, theft, and unauthorized inspection.

(3) REPORTS. Each institution shall submit to the department:

(a) Reports as required under s. 48.67 (3), Stats.

(b) A special report within 48 hours after the occurrence of an unusual incident such as a major fire or the death or serious injury of any child. (See ss. HSS 52.04 (9) (j) and 52.05 (7) (j). Major fire means a fire requiring the services of a fire department. "Serious injury" means an injury requiring hospitalization.

History: Cr. Register, August, 1982, No. 320, eff. 9-1-82.

Subchapter II — Determination of Need for Additional Child Care Institution Beds

Note: Sections HSS 52.50 to 52.52 were created as emergency rules effective 6-27-86.

HSS 52.50 Introduction. (1) **AUTHORITY AND PURPOSE.** Sections HSS 52.50 to 52.55 are promulgated pursuant to s. 48.60 (3), Stats., to regulate the establishment of new child care institutions and to control the expansion of existing child care institutions in order to ensure an adequate number and variety of facilities to meet the needs of Wisconsin children who require out-of-home residential care and to prevent unnecessary expansion of child care institutions and the resulting increase in costs to Wisconsin citizens.

(2) **TO WHOM THE RULES APPLY.** This subchapter applies to all new applicants for a child care institution license and to existing child care institution licensees wishing to expand the child care capacity of their facilities.

History: Cr. Register, October, 1988, No. 394, eff. 11-1-88.

HSS 52.51 Definition. In this subchapter, "applicant" means any person wishing to apply for a license to begin operation of a new child care

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institution or any person wishing to expand the capacity of an existing child care institution. "Applicant" does not include a person who by reason of consolidation or other acquisition acquires control or ownership of child care institution beds, which consolidation or other acquisition results in no increase in or a reduction of the existing state-wide child care institution bed capacity.

History: Cr. Register, October, 1988, No. 394, eff. 11-1-88.

HSS 52.52 Certification of need requirement. (1) No person may apply for a license under s. HSS 52.02 (3) (a) to (d) to operate a new child care institution or for a license amendment under s. HSS 52.02 (3) (g) to expand the bed capacity of an existing child care institution until the department has reviewed the need for the additional placement resources which would be created and has certified to the applicant in writing that a need exists for the proposed new placement resources.

(2) The department shall give the applicant a copy of this subchapter and any informational material relating to the application and evaluation of need process.

History: Cr. Register, October, 1988, No. 394, eff. 11-1-88.

HSS 52.53 Demonstration of need. To enable the department to make a determination of need for a new child care institution or for additional beds at an existing child care institution, the applicant shall submit the following documentation materials to the department:

(1) A detailed plan for the operation of the proposed child care institution which includes:

- (a) The number, sex and age range of the children to be served;
- (b) The type or types of needs or disabilities of children to be served;
- (c) The facility staffing, including a list of full-time and part-time positions by job titles and numbers;
- (d) A description of the proposed program and treatment goals;
- (e) A proposed budget, including the current or projected per diem rate; and
- (f) The location of the facility and a drawing of the layout of the physical plant;

(2) A detailed written description of the methodology and findings which document the reasons why the unserved children under sub. (1) (a) cannot be served satisfactorily in less restrictive settings such as in their own homes with treatment services provided to the children and their families, in specialized treatment foster homes or in group homes;

(3) Documentation that existing Wisconsin child care institution placement resources are not adequate to meet the needs of Wisconsin children who require the type or types of care and treatment services the applicant proposes to provide. No beds occupied or to be occupied by children who are placed primarily for educational purposes may be considered in determining need under this section. Of the remaining beds, for purposes of determining need and establishing waiting lists, not more than 40% shall be considered available for out-of-state children; and

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(4) Information that supports the probability that the new or expanded facility will be used by Wisconsin placement sources, and that an expanded facility will attain and maintain an average monthly occupancy rate of 80% or more over the first 2 years of operation and that a new facility will have an average monthly occupancy rate of not less than 80% at the end of the second year.

Note: Applicants should send their plan of operation and documentation of need for additional placement resources to: Bureau for Children, Youth and Families, Division of Community Services, P.O. Box 7851, Madison, WI 53707.

History: Cr. Register, October, 1988, No. 394, eff. 11-1-88.

HSS 52.54 Publication of notice—party status. (1) Upon receipt of the documentation materials listed in s. HSS 52.53, the department shall publish a class 2 notice under ch. 985, Stats., in the official state newspaper designated under s. 985.04, Stats., and in a newspaper likely to give notice in the area of the proposed facility. The notice shall include a statement that the department has received an application for a certificate of need to operate a new child care institution or to expand the bed capacity of an existing child care institution. The notice shall also include the number of additional beds, the geographic location of the facility, the geographic area to be served, the types of children to be accepted for care, the services to be provided and program objectives.

(2) The notice shall invite the submission of written comments, factual data and reasons why the application should be granted or denied from any person within 30 days after the publication of the notice. The notice shall advise persons submitting written comment to indicate their interest in the application and whether the individual commentator wants to be considered for party status in any later proceedings.

Note: Persons submitting written comments on an application should send their comments to: Bureau for Children, Youth and Families, Division of Community Services, P.O. Box 7851, Madison, Wisconsin 53707.

History: Cr. Register, October, 1988, No. 394, eff. 11-1-88.

HSS 52.55 Need determination. (1) **EVALUATION PROCEDURES.** (a) The department shall review the applicant's documentation materials for completeness and may ask the applicant for additional materials or information that the department considers necessary for evaluation purposes.

(b) Except as provided under par. (c), the administrator of the department's division of community services or his or her designee shall make the need determination decision based on the following criteria:

1. The compatibility of the applicant's proposed plan of operation or expansion with the stated treatment goals for the program;

2. The validity of the research methodology used to document need for the proposed program;

3. The congruence of the conclusions reached in the applicant's needs research with department data on current county child care placement needs and available beds in existing child care institutions providing similar services;

4. The correctness of the applicant's contention that the proposed facility is more appropriate than less restrictive child care arrangements;

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5. The applicant's documentation supporting the argument that existing Wisconsin child care institution placement resources are not adequate to meet the needs of Wisconsin children who require the type or types of care and treatment services the applicant proposes to provide; and

6. The applicant's documentation of the probability that the expanded facility will attain and maintain an average monthly occupancy rate of 80% or higher for the first 2 years of operation or, if a new facility, not less than an average monthly occupancy rate of 80% at the end of the second year.

(c) An application for expansion of an existing child care institution by 3 or fewer additional beds shall be presumed to meet the criteria under par. (b) unless:

1. The child care institution has submitted another application for expansion of bed capacity within a 2 year period; or

2. There is clear and convincing evidence that the criteria under par. (b) are not met.

(2) NOTICE OF DECISION. (a) Within 90 calendar days after the date on which all required documentation materials were received from an applicant, the department shall send written notice of the decision to the applicant and to anyone who commented in writing on the application. The notice of decision shall state the specific reason for the decision.

(b) Notification of a favorable decision shall include approval to submit an application for a license to operate a new child care institution or to add beds to an existing institution.

(c) The duration of the approval under par. (b) shall be limited to 18 months from the date that it is issued, except that the department may grant one 6-month extension if the institution has a good reason for the delay in becoming operational and documents to the satisfaction of the department that it will be operational within that 6-month period. Any request for extension shall be filed prior to the expiration of the initial 18-month period. If the proposed child care institution is not operational during that 18 month time period, or the extended period, the need determination shall be considered invalid and the approval shall be cancelled. In this paragraph, "operational" means in regard to a new facility that the child care institution has been licensed and has admitted one or more children, and in regard to expansion of an existing facility, that the child care institution is fully licensed to operate with additional beds. Acceptable reasons for an extension under this paragraph shall include unforeseen delay in obtaining adequate financing approval, in staffing or in construction.

(3) APPEAL. (a) An applicant or a party adversely affected by the decision issued under sub. (2) (a) may request an administrative hearing under s. 227.42, Stats., within 30 days after the date of the decision. This hearing shall be a class 1 proceeding.

(b) The standard of review for the hearing shall be whether the record contains the quantity and quality of evidence that a reasonable person could accept as adequate to support the decision.

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(c) The hearing examiner may require the parties to attend a prehearing conference. The hearing examiner may issue a preliminary certification of parties at any prehearing conference.

Note: The request for a hearing should be sent to the Office of Administrative Hearings, P.O. Box 7875, Madison, WI 53707.

History: Cr. Register, October, 1988, No. 394, eff. 11-1-88.